



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 9, 1978

ATTORNEY GENERAL OPINION NO. 78- 179

Mr. Floyd H. Dibbern
State Fire Marshall
Forbes Field, Building 730
Topeka, Kansas 66619

RE: Fire Protection -- Fire Safety and Prevention --
Rules and Regulations for Safeguarding Life
and Property from Fire and Explosion

SYNOPSIS: K.A.R. 22-7-62 prohibits the use of motor fuel dispensing pumps which are operated by a limited number of persons who lease keys or cards which activate the pumps, irrespective of the fact that devices such as this are not considered as being open to the public.

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Dear Mr. Dibbern:

You have inquired as to whether Kansas statutes and regulations prohibit the installation and use of key or card-operated motor fuel dispensing equipment. It is my understanding that in using a marketing system of this type, the distributor maintains a pump which has a series of locked recording devices, each of which may only be activated by the use of a specific key or card. The keys or cards are then sold or otherwise leased to a limited number of individuals at the discretion of the distributor. The consumer who desires to make a purchase must insert his key into the recording device to which he has been assigned. Once the recording device has been activated the consumer may dispense any amount of fuel which he desires; the amount of fuel is automatically recorded and the key holder is later billed for the cost of the purchase. As is apparent

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from this description, a service station attendant is not required to be present during any part of this operation. In fact, this type of installation appears to have been designed to allow customer access to fuel pumps during hours that a service station might be closed to the public.

Pursuant to K.S.A. 1977 Supp. 31-133(a)(1) the State Fire Marshall is empowered to regulate the "keeping, storage, use, sale, handling, transportation or other disposition of highly flammable materials . . ." In accordance with this statute, and its predecessor K.S.A. 31-207, your office has promulgated certain regulations pertaining to service stations. Among these regulations is K.A.R. 22-7-62 which states in part that:

Dispensing equipment shall not
be operated by any person other
than the proprietor or his autho-
rized employee . . .

While K.A.R. 22-7-62 does contain a number of exceptions to this general rule, it cannot be said that any of them apply to the key or card-operated system which is described above. Rather the exception clauses only authorize the utilization of self-service stations which have an attendant on duty, although actual product dispensing is performed by the customer. E.g. K.A.R. 22-7-62(1). There are presently no exceptions which encompass the key or card-operated dispensing equipment.

Therefore, I must conclude that Kansas regulations do not authorize the use of key or card-operated motor fuel dispensing pumps unless the distributor or his authorized employee is present when such devices are being used.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:CAB:dh